

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOSEPH BREELAND,)	
)	
Plaintiff,)	Case No. 1:10-cv-70-SJM-SPB
)	
v.)	
)	
MARK BAKER,)	
)	
Defendant.)	

MEMORANDUM JUDGMENT ORDER

Plaintiff's complaint in this civil rights action was received by the Clerk of Court on March 25, 2010 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. On August 20, 2010, Defendant filed a motion to dismiss the complaint [19] and supporting brief [20], to which Plaintiff responded on August 25, 2010 [22]. That same day, Defendant filed a supplemental motion to dismiss [23], which included an attached verification from Melinda Adams, Assistant Superintendent, Grievance Coordinator, and Litigation Coordinator at SCI-Albion. Plaintiff filed supplemental responses on August 31, 2010 [24], November 15, 2010 [32] and January 5, 2011 [41].¹

The Magistrate Judge's Report and Recommendation, filed on February 3, 2011 [42], recommends that the Defendants' motion to dismiss [19] be granted. Plaintiff's objections [43] were filed on February 18, 2011. After de novo review of the complaint

¹ Because both parties submitted evidence in support of or in response to the Defendant's motions, the Magistrate Judge treated the motion as one brought under Fed. R. Civ. P. 56. Although it does not appear that any order was entered formally converting the Rule 12 motions into Rule 56 motions, we deem any error in this regard to be harmless, as it appears that no genuine issue of fact exists with respect to the dispositive issue in question, namely, Plaintiff's failure to administratively exhaust the claims in question, nor does there appear to be any basis upon which further record development could lead to the creation of an issue of fact in this regard.

and documents in the case, together with the Report and Recommendation and Plaintiff's objections thereto, the following order is entered:

AND NOW, this 23rd day of February, 2011;

IT IS ORDERED that the Defendant's motion to dismiss [19] and supplemental motion to dismiss [23] be, and hereby are, GRANTED. Inasmuch as said motions have been treated as motions for summary judgment under Rule 56, IT IS FURTHER ORDERED that JUDGMENT be, and hereby is, entered in favor of the Defendant, Mark Baker, and against Plaintiff, Joseph Breeland.

The Report and Recommendation of Magistrate Judge Baxter, filed on February 3, 2011 [42], is adopted as the opinion of this Court.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
United States District Judge

cm: All parties of record

U.S. Magistrate Judge Susan Paradise Baxter